

REMARKS

Claims 2, 3, 5-8, 11, 13-16, 18-21 and 23-27 have been examined on their merits, and are all the claims presently pending in the application.

Applicant thanks the Examiner for indicating that claims 2, 3, 5-8 and 11 are allowed.

The Patent Office has not considered three of the non-patent literature documents included in the May 26, 2004 Information Disclosure Statement. In particular, the Patent Office notes some discrepancies between the titles of the actual documents and the titles listed in the PTO/SB/08 A & B form. However, if the Patent Office had performed a closer inspection of the non-patent literature documents, the Patent Office would have found that all other document identifying information (*e.g.*, page numbers, dates, conference/symposia names, author names, etc.) corresponded to the non-patent literature documents included in the May 26, 2004 Information Disclosure Statement. The title discrepancy arises from the English translation of the July 8, 2003 Office Action issued by the Japanese Patent Office. Applicant is including another copy of the PTO/SB/08 A & B form submitted with May 26, 2004 Information Disclosure Statement and respectfully requests that the Patent Office an initialed copy of the PTO/SB/08 A & B form, thereby confirming that the listed references have been considered.

1. The Patent Office objects to claim 27 as containing informalities. Applicant herein amends the preamble of claim 27 to obviate the informality. Applicant submits that the objection to claim 27 has been overcome, and respectfully requests withdrawal of the objection.

2. Claims 13-16, 18-21 and 23-27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lee (U.S. Patent No. 6,345,275) in view of Kasutani *et al.*, *Image Retrieval System Using Compact Color Layout Descriptor*, Materials of the 4th Image Media Processing Symposium, Japan, 29 September 1999, IMPS99, pp. 89-90. Applicant traverses the rejection of claims 13-16, 18-21 and 23-27 for at least the reasons discussed below.

With respect to independent claim 13, the Patent Office acknowledges that Lee fails to teach or suggest a dominant color calculating means. The Patent Office combines the disclosure of Kasutani *et al.* with Lee to reject independent claim 13.

In order for 35 U.S.C. § 102(a) to apply, the publication must have a publication date earlier than the effective filing date of the application, and must not be Applicant's own work.

Mr. Eiji Kasutani has executed a 37 C.F.R. § 1.132 Declaration stating that he is both a co-author of the *Image Retrieval System* publication and the inventor of the present application. Mr. Kasutani has declared that he is the original and first inventor of the claimed subject matter, and that the features and characteristics of the *Image Retrieval System* publication relied upon by the Examiner to reject claims 13-16, 18-21 and 23-27 are his own work. In addition, Mr. Kasutani has declared that the literary co-authors of the *Image Retrieval System* publication, Mr. Akio Yamada and Mr. Mutsumi Ohta, were working under his direction. Thus, the foregoing is sufficient evidence that Mr. Kasutani, to the extent the invention is shown in the *Image Retrieval System* publication, is responsible for the disclosure relied upon by the Patent Office to reject claims 13-16, 18-21 and 23-27. *See, e.g., In re Katz*, 687 F.2d 450, 455 (C.C.P.A 1982).

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In view of the above, the Patent Office is requested to remove the *Image Retrieval System* publication as a reference against the pending claims, since it is unavailable as a reference under 35 U.S.C. § 102(a). Since the Patent Office relies upon the *Image Retrieval System* publication in combination with Lee to reject independent claim 13, Applicant submits that independent claim 13 is now allowable, and further submits that claims 14 and 15 are allowable as well, at least by virtue of their dependency from claim 13. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 13-15.

With respect to independent claim 16, Applicant submits that claim 16 is allowable as well for at least reasons analogous to those discussed above for claim 13. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claim 16.

With respect to independent claim 18, Applicant submits that claim 18 is allowable as well for at least reasons analogous to those discussed above for claim 13. Applicant submits that claim 18 is allowable, and further submits that claims 19 and 20 are allowable as well, at least by virtue of their dependency from claim 18. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 13-15.

With respect to independent claim 21, Applicant submits that claim 21 is allowable as well for at least reasons analogous to those discussed above for claim 13. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claim 21.

With respect to independent claim 23, Applicant submits that claim 23 is allowable as well for at least reasons analogous to those discussed above for claim 13. Applicant submits that claim 23 is allowable, and further submits that claims 24 and 25 are allowable as well, at least by

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virtue of their dependency from claim 23. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 23-25.

With respect to independent claims 26 and 27, Applicant submits that claims 26 and 27 are allowable as well for at least reasons analogous to those discussed above for claim 13.

Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 26 and 27.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

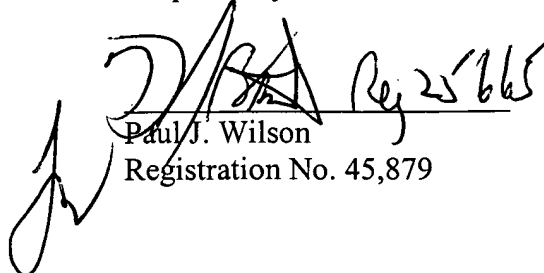
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